

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

March 1, 2004

CALL TO PODIUM:

Jacqueline Marsh

RESPONSIBLE STAFF:

Jacqueline Marsh, Associate
Planner

Patricia Patula, Planner

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
<input checked="" type="checkbox"/>	Historic District Commission
	Consent Item
	Ordinance
<input checked="" type="checkbox"/>	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item
is a public hearing)

Introduced	
Advertised	11-21-03
Hearing Date	12-1-03
Record Held Open	2-15-04
Policy Discussion	2-17-04

TITLE:**HISTORIC DISTRICT COMMISSION**

Resolution approving HAWP-78A, 104 Chestnut Street,
Chris McKee, for driveway and garage changes, and tree
removal

SUPPORTING BACKGROUND:

During the February 17, 2004 HDC meeting, staff was
directed to prepare a resolution approving HAWP-78A. The
attached is Resolution HDC-1-04, which was reviewed by
City Attorney.

DESIRED OUTCOME:

Approve resolution HDC-1-04

RESOLUTION NO. HDC-1-04

RESOLUTION OF THE HISTORIC DISTRICT COMMISSION
TO APPROVE HAWP-78A, A REQUEST FOR DRIVEWAY EXTENSION,
GARAGE MODIFICATIONS, AND TREE REMOVAL AT
104 CHESTNUT STREET, LOCATED IN THE CHESTNUT/MEEM HISTORIC
DISTRICT, IN THE R-90 (MEDIUM DENSITY RESIDENTIAL) ZONE,
GAITHERSBURG, MARYLAND

HAWP-78A

OPINION

This proceeding constitutes an action pursuant to §24-225 of the Zoning Ordinance (Chapter 24 of the Gaithersburg City Code) which permits the Historic District Commission (HDC) to review and approve historic area work permit requests consistent with the procedures as provided in §24-228.1 and §24-228.2 of the City Code.

The subject property, Lot 16, Block B, in Meem's Addition to Gaithersburg is located at 104 Chestnut Street, Gaithersburg, Maryland, in the Chestnut/Meem Historic District, in the R-90 (Medium Density Residential) Zone.

Operative Facts

On September 22, 2003, Chris McKee submitted a historic area work permit application, which was designated HAWP-78A. A public hearing was held on Thursday, October 2, 2003, by the Historic Preservation Advisory Committee (HPAC) on HAWP-78A, which is a request to extend the existing twenty-three foot parking pad to connect with the garage, which is behind the house; make elevation changes to the garage; and remove two trees at 104 Chestnut Street. The hearing had been advertised in the *Gaithersburg Gazette* on September 24, 2003, the required parties given notice, and the property posted per §24-228.1(d) of the City Code.

Kim Walker, 104 Floral Drive, inquired if the older oak trees on the property were going to be preserved. The applicant stated he had no plans to remove them.

The HPAC found the request in compliance with Secretary of Interior Standard Number 2, which states the historic character of a property shall be retained and preserved; Secretary of Interior Standard Number 6, which states deteriorated historic features shall be repaired rather than replaced; and the guidelines of the Chestnut/Meem Historic District. Based on these findings, the HPAC unanimously recommended approval of HAWP-78A with three conditions:

1. The tree protection plan is to be reviewed and approved by the Environmental Specialist of Gaithersburg;

2. Detailed drawings of the garage changes (all four elevations) are to be provided and approved by Permits and Inspections prior to issuance of building permits; and
3. The man-door and windows of the garage are to be retained.

The application for HAWP-78A was scheduled as a consent item on the Historic District Commission (HDC) Agenda of October 20, 2003.

On October 20, 2003 a petition was submitted to the HDC from the residents of the Chestnut/Meem Historic area to hold another hearing on this matter per §24-228.1.(b) of the City Code. This request was to enable the adjacent property owners who had not come to HPAC's October hearing to present their views.

During the HDC meeting on October 20, 2003, Chairman Katz asked that HAWP-78A be removed from the agenda due to the neighbors' petition, submitted after HPAC closed their record. The HDC requested HPAC to reopen the record at their November meeting to receive the petition and then forward a recommendation.

At their meeting of November 6, 2003, the HPAC reviewed the petition from the Chestnut/Meem residents and, after discussion and a motion that failed to reopen the record, determined that due process had been followed for the public hearing of October 2, 2003, regarding its recommendation for approval to the HDC. The HPAC recommended that the HDC hold a public hearing on the application as requested by the residents of the Chestnut/Meem area.

At the HDC meeting on November 17, 2003, the HDC had a policy discussion and decided to hold a public hearing on HAWP-78A.

On December 1, 2003, the HDC held a public hearing on HAWP-78A. The hearing had been advertised in the *Gaithersburg Gazette* on November 28, 2003, the required parties given notice, and the property posted per §24-228.1(d) of the City Code. The exhibits for this application are listed on an Index of Memorandum in the subject file. At the hearing before the HDC, the following testimony was given:

Following a brief introduction by Associate Planner Marsh, the applicant, *Chris McKee, 239 Midsummer Circle*, reviewed and pointed out existing conditions on the site and said he was willing to add landscaping to both sides of the driveway to soften the look.

Testifying in opposition to the proposal were: *Dan Washburn, 102 Chestnut Street; Mary Jo LaFrance, 105 Chestnut Street; Marjie Zetts, 113 Meem Avenue; Vikki Jean-Baptiste, 115 Meem Avenue; and Andrew Frost, 107 Chestnut Street.*

Kim Walker, 105 Floral Drive, objected to opening up the alley way due to people not understanding the boundaries of private property.

The applicant agreed to keep the record open for forty-five (45) days. The HDC directed City staff to hold a meeting for the applicant and the neighborhood to address the concerns stated in the petition and at the hearing.

At the January 5, 2004, HDC meeting, the HDC received a staff recommendation presented by Assistant City Manager Fred Felton, who stated the applicant agreed to extend the record open thirty (30) more days from the scheduled closing date of January 15, 2004.

At the request of the HDC, staff held a meeting for the applicant and interested Chestnut/Meem residents at City Hall on February 9, 2004 to address the concerns raised at the public hearing. During the meeting, alternatives were suggested. The possibility of sharing the existing driveway at 106 Chestnut Street for both properties was discussed, as well as opening the 10' public right of way off Meem Avenue to be used as a rear entrance to the property. The applicant expressed his opposition to both ideas. The applicant stated he was willing to add landscaping on both sides of the driveway and also change the angle of the driveway to address the concerns. No consensus could be reached between the applicant and the residents.

The record on HAWP-78A was closed on February 15, 2004.

On February 17, 2004, the HDC held a second policy discussion on this application. Following review and discussion on the additional record exhibits, the HDC directed staff to prepare a resolution granting approval to HAWP-78A.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City Code) are among the provisions which define the nature of the Historic District Commission's review powers for historic area work permit applications in the City of Gaithersburg:

Sec. 24-225. Powers and duties of the historic district commission.

The historic district commission shall have those powers, duties, and authority assigned to it by Article 66B, MD. CODE ANN, the zoning ordinance of the City of Gaithersburg, and those acts or enactments of the city council of the City of Gaithersburg. The commission shall adopt such rules and regulations as may be necessary for the proper transaction.

* * *

Sec. 24-228.1 Historic area work permit; application procedure.

(c) *Review and public meeting.* The historic preservation advisory committee shall schedule and conduct a public meeting on the application, giving notice pursuant to subsection (d) below. The committee shall maintain minutes of its proceedings and a public file of all relevant correspondence, documents and other materials on the request

for the historic area work permit. The committee and the Planning and Code Administration of the City of Gaithersburg shall thereafter promptly forward their written recommendations to the historic district commission. The historic district commission may render its decision based upon these recommendations or public comment received before the committee, or in its discretion, hold a public hearing giving notice pursuant to subsection (d) below. Further, where the property owner and the historic preservation advisory committee agree to the approval of the application and any conditions of such approval, the historic district commission may, in its discretion, render its decision based on said agreement without the necessity of further public comment.

* * *

(e) *Action by the historic district commission.*

* * *

(3) Failure of the historic district commission to act on a completed application within forty-five (45) days from the date the completed application was accepted for filing, or in the event the record is held open by the commission, within fifteen (15) days after the close of the record, shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five (45) day period is agreed upon mutually by the applicant and the commission or the application is withdrawn. Action by the commission on a completed application as provided by this subsection shall mean: (i) actions provided for in subsection (e)(1) of this section 24-228.1; or (ii) a remand of the matter to the historic preservation advisory committee for further review and recommendation; provided, that the period of remand to the date of final decision by the commission shall not exceed ninety (90) days.

Sec. 24-228.2. Historic area work permits; criteria for decision.

(a) The historic district commission, in evaluating an application for a historic area work permit, shall consider and render its decision based on the following factors:

- (1) The preservation of the historic, archaeological, or architectural significance of the site or structure and its relationship to the historic, archaeological or architectural significance of the surrounding area;
- (2) Guidelines for rehabilitation and new construction design for designated sites, structures, and districts adopted by resolution of the historic district commission, including criteria for construction, alteration, reconstruction, moving and demolition which are consistent with the Secretary of the Interior's *Standards for Rehabilitation*;
- (3) The relationship of the exterior architectural features of the structure to the remainder of the structure and surrounding area;
- (4) The general compatibility of the exterior design, scale, proportion, arrangement, texture and materials proposed to be used; and

- (5) Any other factors, including aesthetic factors, which the commission deems pertinent.

* * *

- (e) The historic district commission shall consider only exterior features of a structure, and not consider any interior features or arrangements.

Findings

The Historic District Commission reviewed the evidence of record in this case, which included HPAC minutes and transcripts from the public hearings on the application, the petition signed by 34 residents of the Chestnut/Meem Historic District, e-mails from *Dan Washburn* and *Mary K Pedigo*, 102 Chestnut Street, a letter of testimony from *Judith Helm Robinson of Robinson and Associates* (a consulting firm), a letter of testimony from *Bernard and Mary Jo LaFrance*, 105 Chestnut Street, memorandums from the City Attorney and City staff, and other items listed in the index of memorandum for this application.

The Historic District Commission agrees with the recommendation of approval by HPAC, which stated that the application is in conformance with the Secretary of Interior Standard 2, which states the historic character of a property shall be retained and preserved; the removal of historic materials or alteration of features and spaces that characterize a property shall be avoided. The application does not propose to remove any buildings of historic character. The house on this property, which is a significant resource to the Chestnut/Meem Historic District will be preserved. The trees to be removed are not significant in the characterization of the property as historic. The garage is being preserved by rehabilitation so it can be utilized on the lot where it was first constructed.

The Secretary of Interior Standard Number 6 states deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old design, color, texture, and other visual qualities and, where possible, materials. The changes proposed for the garage will make it a viable building for the lot on which it is located. The application proposed replacement of deteriorated parts, such as fascia boards, and to repair the existing doors on the garage. The application also meets the guidelines of the Chestnut/Meem Historic District.

The issue of denied access for the property was reviewed by the HDC. An abutting property owner's right of access to his property from a public right-of-way is a primary incident of ownership. The HDC finds that there are no pedestrian or other safety issues raised by this application that might otherwise permit impairment of that right. In addition, the HDC finds that sufficient evidence has not been presented which proves that the addition of the driveway would compromise the historical integrity of the property. For these reasons, the HDC finds that there is an insufficient basis for denying the property owner access to his property from the public right-of-way.

Conclusion

Upon consideration of all the evidence, and the testimony in favor of and in opposition to the application HAWP-78A, the Historic District Commission concludes that the plan meets the criteria for historic area work permit approval, under §24-228.2(a)(2).

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the Historic District Commission of the City of Gaithersburg, on March 1, 2004, that HAWP-78A, to extend the driveway, make changes to the garage elevations, and remove two trees, at 104 Chestnut Street, is hereby approved subject to the following conditions:

1. The applicant agrees to work with staff regarding driveway materials, design, angle/placement, and landscaping elements consistent with the application; and
2. The tree protection plan shall be reviewed and approved by the Environmental Specialist of Gaithersburg; and
3. The man-door and windows of the garage are to be retained.

SIDNEY A. KATZ, CHAIRMAN
HISTORIC DISTRICT COMMISSION

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Historic District Commission in a public meeting assembled on the 1st day of March, 2004.

David B. Humpton, City Manager